SUPREME COURT OF THE UNITED STATES

October Term, A. D. 19[illegible]

Case No. 16,4[illegible]. Term No. [illegible]

HARRY W. DICKINSON, Trustee of the Second National Bank of Rockford, Illinois, etc.,

Petitioners,

vs.

THE NORTHERN TRUST COMPANY and OTIS B. J[illegible],

Respondents.

On Writ of [illegible] to the [illegible] Circuit Court of Appeals for the [illegible] Circuit.

BRIEF IN REPLY FOR PETITIONERS TO AMENDED BRIEF FOR RESPONDENTS.

OTTO GRESHAM,

Solicitor for Petitioners.

JOHN S. COOPER,

Of Counsel.

[illegible]

—IN THE—

Supreme Court of the United States.

OCTOBER TERM, A. D. 1898.

Case No. 16,724. Term No. 196.

HARRY W. DICKERMAN, Trustee of the Second National Bank of Rockford, Illinois, et al., *Petitioners*, vs. THE NORTHERN TRUST COMPANY AND OVID B. JAMESON, *Respondents*.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

BRIEF IN REPLY FOR PETITIONERS TO AMENDED BRIEF FOR RESPONDENTS.

The brief for respondents practically ignores the provisions of the option contracts (Rec., p. 503), which embody the only contract between the petitioners and promoting bondholders once represented by Emanuel Stein, and now represented by the Trustees in the mortgage sought to be foreclosed, respondents herein.

The following propositions of respondents' brief are fully answered by the option contracts between the petitioners and the promoters:

(1) That no rights of creditors are involved in this suit. (Brief No. IV, p. 55.)

(2) That defendant corporation could not maintain an action or defense such as was set up by appellants. (No. VI, p. 77.)

(3) That petitioners cannot maintain such defense or such action. (No. VII, p. 91.)

(4) That there was no fraudulent over-valuation. (No. V, p. 56.)

(5) That no fraud, concealment or deceit was practiced upon the petitioners. (No. X, p. 116.)

(6) That the petitioners participated and acquiesced in the issue of the $2,113,000 of stock. (No. VIII, p. 92.)

(7) That petitioners were not stockholders at the time of the conveyance of the property for the stock. (No. IX, p. 107.)

I.

That no rights of creditors are involved in this suit.

(No. IV. p. 55.)

This is true, and yet the rights of a non-assenting stockholder who has paid par for his stock, are as well protected in a court of equity against stockholders who receive stock for less than par as are the rights of creditors.

In the case of *Burke vs. Smith*, 16 Wall., 390, at page 397, Mr. Justice Strong, in delivering the opinion of the court, says:

> "Conditions attached to subscriptions, which, if valid, lessen the capital of the company, thus depriving the State of the security it exacted that the railroad would be built, and diminishing the means intended for the protection of creditors, are therefore a fraud upon the grantor of the franchise, and upon those who may become creditors of the corporation. *They are also a fraud upon unconditional stockholders who subscribed to the stock in the faith that capital sufficient would be obtained to complete the projected work, and who may be compelled to pay their subscriptions, though tho enterprise has failed, and their whole investment has been lost.* It is for these reasons that such conditions are denied any effect."

In *Morgan vs. Struthers*, 131 U. S., 246, on page 254, it is said:

> "We have read with care all the authorites cited by counsel for defendant in error to support the claim that the contract in question is, in the eye ot the law, fraudulent and void. Those which relate to contracts connected with subscriptions of stock are simply illustrative, in different forms, of a doctrine settled in a great number and variety of decisions, that a corporation has no legal capacity to release an original subscriber to its capital stock from payment of it, in

whole or in part; *and that any arrangement with him by which the company, its creditors or stockholders, shall loose any part of that subscription, is ultra vire and a fraud upon creditors and the co-subscribers.* *Burke vs. Smith*, 16 Wall. 390, 395; *Bedford R. R. Co. vs. Bowser*, 48 Penn. St., 29; *Green Brices Ultra Vires*. This doctrine rests upon the principle that the stock subscribed, both paid and unpaid, is the capital of the company, and its means of carrying out the object for which it was chartered and organized. All these cases fall within this principle. In each of them the agreement declared void, had it been carried out, would have diminished the common fund, which is a trust fund for the benefit of the general creditors of the corporation, *the stockholders*, and all others having an interest therein, and could have been violative of the terms upon which the subscriptions had been expressly made, and under which the trust originated. *The corporation would have been damaged in its capital by the loss of the subscriptions, and the co-subscribers would have been damaged by the lessening of their common trust fund.*"

In *Potts vs. Wallace*, 146 U. S., 689, on page 704, Mr. Justice Shiras said:

> In *Burke vs. Smith*, 16 Wall. 390, 394, it was said, per Strong, J.: "It has been settled by very numerous decisions that the directors of a company are incompetent to release an original subscriber to its capital stock, or to make any arrangement with him by which the company, it creditors or the state shall lose the benefit of his subscription. Every such arrangement is regarded in equity not merely as *ultra vires, but a fraud upon other stockholders*, upon the public, and the creditors of the company."

In *Sturges vs. Stetson*, 1 Biss 246 (23 Fed. Cas., 311) Mr. Justice McLean held, that the directors of a company have no power to receive subscriptions of stock at a less

price per share than is fixed in the charter. That such a subscription would be not only in express violation of the charter, but a *fraud upon prior stockholders*. That such act of the dtrectors would be no less a fraud if done *innocently*.

In *Fosdick vs. Sturges*, 1 Biss., 255 (9 Fed. Cases, 501), Mr. Justice McLean holds that prior stockholders who paid par have the right to complain of subsequent issues at less than par, and refers to *Sturges vs. Stetson*, *supra*.

In *Higgins vs. Lansingh*, 154 Ill., 301 (cited by respondents), the court fully recognizes this principle.

At page 331 that court said:

> "Had there been, at the time, *other stockholders* who had paid for their stock, or creditors who had been injured by the transaction, and not consenting thereto, then, as to them, counsel's argument would be unanswerable."

Again on page 336:

> "It is not, of course, decided that such a disposition of these certificates as was made to Benson, Blaney and Sherman would have been valid as to others subscribing and paying for stock at par, without notice of and not consenting to such disposition. Different principles control the decisions of such cases."

In No. XI at page 122 of their brief, respondents state the remarkable proposition that New Jersey is the only forum in which the liability of the stockholders of the Columbia Straw Paper Company can be enforced.

Admitting that in a proceeding *by a creditor* against a stockholder of a New Jersey corporation on an unpaid stock subscription, the court must have before it all the stockholders and all the creditors, including the corporation;

such a rule can have no application where the corporation is simply collecting from the stockholder the amount he has agreed to pay to the corporation *on his subscription* to the capital stock. The liability of each stockholder in such a case is several and not joint, and not even dependent upon there being creditors of the corporation in existence.

The corporation, we submit, may sue one or more stockholders on the unpaid balance of stock subscription in any jurisdiction in which it may secure service, or in which the stockholder will voluntarily appear; and in such an action the stockholder cannot set up that the corporation, at the time he subscribed, agreed not to call on him for the full face value of the stock, unless at the same time the stockholder can show that the corporation made that agreement with *every other stockholder* in the corporation.

Morawetz on Corporations, Secs. 302 to 315, inclusive, and authorities cited in foot notes.

An agreement to release one stockholder and not another is no more binding on the corporation than is the agreement of the corporation to release all the stockholders against the creditors. The stockholder who has paid par for his stock is entitled to ask that the corporation compel the other stockholders to do likewise and the corporation may do this in any jurisdiction in which service may be had, or the stockholder voluntarily appears.

If the liability of a stockholder can be enforced in Illinois, it then follows that the corporation should be allowed to set off such a liability when the Illinois stockholder seeks to foreclose a mortgage on property of the New Jersey corporation situated in Illinois; and in addition to setting off what may be sufficient to defeat the foreclosure, the corporation shall

also be allowed in the same suit by cross-bill to compel the stockholder, who brought the foreclosure, to pay up all he owes to the corporation by reason of his subscription to the capital stock of the company, although there may be other stockholders in other States who are in arrears to the corporation on their stock subscription. Upon the Illinois stockholder paying his subscription in full, he then can compel the corporation, if derelict, to proceed against the other stockholders, whether in New Jersey or in any other State.

Although a suit by a creditor against part of the stockholders, the case of *Hatch vs. Dana*, 101 U. S., 205, establishes the principle for which we contend, and which is controlling here.

Morawetz on Corp., Sec. 315.

II.

That the defendant corporation could not maintain an action or defense such as was set up by appellants.
(No. VI, p. 77.)

The agreement in the options by the petitioners to accept from the company the stock was a subscription upon their part, and made them stockholders and interested in the corporation the very instant the options were accepted by the company or by the vendees in the options (Stein), *on behalf of the company.* The corporation being bound by the acceptance of the options to deliver the purchase-money stock, the petitioners, in turn, were governed by the provisions of the options, and were bound to accept such stock in purchase of their plants; and immediately upon its formation and acceptance of the options through Stein, assignee, it became its duty to protect the petitioners

and other mill owners becoming interested in the stock of the company by virtue of the options. In rendering that protection it became its duty, by means of its board of directors, to insist upon Stein and the other promoters allowing the $2,113,000 of stock to remain in the treasury to purchase the other thirty-one mills under the options; or, if Stein and the promoters took it out, to insist that they paid its full par value as subscribers, equally as petitioners did with their mill plants, so that the company would then have the money in place of the stock to purchase the other mills. In this manner only could the company protect the petitioners from the wrongful acts of Stein and his co-promoters, and also protect itself from being robbed of its funds without any consideration, and also prevent the provisions of the options from being violated.

III.

That petitioners can not maintain such defense or such action. (No. VII. p. 91.)

It follows from what has been said above in reference to the rights of the corporation itself to maintain the defense under the answer and the action under the cross-bill, that these petitioners, as minority stockholders, have the same rights when the corporation itself is in the control of the promoters.

IV.

That there was no fraudulent overvaluation. (No. V. p. 56.)

The argument of the respondents is met by the fact that the options provide that $4,000,000 of stock was to pay for mills to be acquired. The evidence shows the number to be seventy. The options also show that these mills were either to be taken direct by the company at the prices named in the options, or else the vendees in the options were to turn them over at the same prices. The plain meaning of the provisions of the options is borne out by the sworn answer of Ramsdell on page 207, lines 44 to 47 of the Record. Consequently, in the formation of the Columbia Straw Paper Company, there was no necessity, nor was it a question at all of putting a value upon the property by the directors. *That had been done by the options themselves and acceptance thereof by the corporation, through Stein, assignee.* There was no intention of any valuation, otherwise than as disclosed by and agreed to in the options.

V.

That no fraud, concealment or deceit was practiced upon the petitioners. (No. X. p. 116.)

If there is any one thing that is fully revealed by the evidence in connection with the options, it is that the petitioners on the one hand and the promoters on the other, fully agreed in writing as to the manner in which the corporation should be organized. The evidence shows that no agreements otherwise were made *subsequent* to the acceptance of the options by the company through Stein. There

is not a single thing lacking in the options to enable honest business men to fully incorporate and carry out the intentions of both parties. The recitals of the options show that the promoters on the one hand wished to organize a corporation to buy the mills from the petitioners, and that such organization was dependent on the milling-plants giving the options (Rec., p. 503), and that it was the desire of the petitioners, on the other hand, to sell their mills to such corporation, *and not to the promoters themselves.* The options then state that "in consideration of the foregoing recitals" certain agreements are made. These agreements are set out in eleven different sections. The 3rd, 5th, 6th, 7th, 8th, 9th and 10th all show conclusively that it was the intention of all parties that the new corporation or corporations should receive title to the mill-plants at the *exact* amounts of the options. The options further show that no provision is made in the options at all for any sale of bonds with a stock bonus. There is no provision for any proposition by the promotors, or Stein, to be made to the company for a sale to the corporation at *any* price. Hence, we say there is nothing in the options themselves to put the petitioners or the mill owners on their guard against any treachery or deceit on the part of the promotors; or to give them any reason to anticipate any different procedure than disclosed by the options.

Section 10 of the options provides that the expense of organizating the corporation to take over the mills was to be borne by the parties of the second part; that is, by Beard and Ramsdell, or Stein, their assignee, and the parties for whom he acted; and hence the petitioners had no reason to anticipate that the promoters would claim the $2,-

113,000 of stock for fees and expenses of promoting the corporation.

VI.

That the petitioners participated and acquiesced in the issue of the $2,113,000 stock. (No. VIII. p. 92.)

It can not be said that the records of the corporation show that at any meeting of the stockholders, the minority stockholders, agreed that Stein and his associates should take the surplus stock. The petitioners made repeated efforts to get in evidence the records of the corporation. They were willing whatever adverse evidence the records contained might be admitted. Sherwood testifies that there was no meeting of the stockholders in Chicago, where the mill owners received their stock through Wolf. Wolf, Stein and Trebein cautioned Sherwood not to disclose to the mill owners anything that he might know about the organization of the corporation and the distribution of its securities, and Sherwood, himself, testifies that he never knew until the bill was filed how many of the mills actually were taken over, although he and the petitioners, as was represented to them, believed, until then, the number had been 70.

The only witness who undertook to testify on behalf of the promoters that the minority stockholders knew that the surplus stock was to go to the promoters is Henry M. Wolf. Mr. Wolf instead of testifying to facts merely testified to this belief. He says he believes the mill owners knew that the 2,113,000 of stock was to go to the promoters and yet he admits that he did not know the amount of the surplus stock, and how and to whom it was to be

distributed, at the time he delivered to the mill men their securities.

Mr. Wolf's belief is not enough to overcome the positive recitals in the contract and the direct testimony for the petitioners.

In *Ogilvie vs. Knox Ins. Co.*, 22 Howard, 280, page 390; this court said:

> "Those who seek to set aside their solemn written contracts by proving loose conversations should be held to make out a very clear case."

On pages 455 and 456 of the Record is Mr. Wolf's testimony on this point. It is as follows:

Q. Now would the two hundred thousand of preferred and the four hundred thousand of common stock, together with the stock that the mill men were to get, would that consume the entire issue of stock of the corporation, which was four million dollars, if you know?

A. You mean that assuming that your figures are correct, would it take all the stock?

Q. Yes, sir.

A. How much do you assume has gone to the mill owners?

Q. I am not assuming anything that you know.

A. I know now there was some surplus stock; just what the amount is I have not in mind; at that time I do not really know whether I knew that or not; my impression is I did not. I did not know anything about the distribution of the stock.

Q. Then the mill owners did not understand what was to be done with it, did they?

A. I do not know what they knew; I had nothing to do with that; my impression is that they did know, but

whether they knew accurately or not, the figures, I do not know. I know that some of them did know.

Q. Now do I understand you to say that the mill owners, instead of the agreed price, who took the bonds, would have with each bond twenty shares of preferred and forty shares of common stock?

A. You ask me whether the mill owners understood that?

Q. Yes, sir.

A. Every one of them, unquestionably.

Q. And they assented to that, and agreed to it at that meeting?

A. I do not say that. I do not say that that question came up at that meeting.

Q. But you do not know whether they knew what was to become of the balance of the preferred and common stock?

A. I say that my impression is that most of them knew, if not all of them, in fact I am morally certain that they all knew.

Q. Now, how do you know, Mr. Wolf, that they knew what was to become of the balance of this stock when you did not know yourself?

A. I said I did not know what the surplus was; I did not know the figures, but I knew in a general sort of way probably at that time, I knew these men who were doing this work and spending all this money, and spending this money for traveling expenses and counsel fees, and devoting a good deal of time, were not doing it for nothing; every mill man knew it; every mill man knew that the bonds were being sold, together with the stock, in the way that I have stated, because I *believe* every mill man was asked to take bonds. Some of them did so, as I have tes-

tified. Mr. Brown, of Elmwood, received ten thousand dollars cash, and took fifteen thousand of bonds. Mr. Carroll, Mr. Hooker also took bonds, and these things were all talked of, they were in the air, and every one knew them in a general way.

There is no evidence therefore from which it can be said that the petitioners knew or acquiesced in the issuance of the $2,113,000 of stock to Stein and his associates, and no record was introduced of the proceedings of the stockholders wherein such action was ratified.

On page 575, of the record, the Court of Appeals said, in its opinion:

> "Assuming that the stock of the new company was of par value, and that the plants were worth only the prices fixed upon them in the several options, of course there would appear to be an over-valuation in the sale. But this is an assumption that would scarcely be warranted. Probably there was not much market value for the stock, especially the common and unpreferred stock. It was supposed that the new enterprise would make the plants more valuable, so that the value of any plant before the transfer would not be evidence of its value after the consolidation should be completed."

As to the suggestion ofthe Court of Appeals that probably there was not much market value for the stock, in view of the New Jersey statute, which provides that stock shall only be issued for cash or in exchange for property at its fair cash value, we call the court's attention to the language of Mr. Justice McLean in *Sturges vs. Stetson*, 1 Biss., 246, at page 249, *supra*.

> "The plea sufficiently shows that there was no sale of stock to the plaintiff, which had been previously issued, but an attempt to create the stock and sell it

at the same time, as one transaction; and it appears that the discount of nearly one-third of the shares purchased was a part of the contract of subscription; and this presents the great question in the case, whether the directors had power to issue the stock for less than its par value.

"If it is not admitted in the argument, it is not controverted, that the commissioners who, before the organization of the company, received subscriptions of shares, had no power to receive them for less than the amount stated in the charter. But it is said that the subscription of the plaintiff was not received by the commissioners, but by the board of directors, who exercised all the powers of the corporation; and among others, the power of sale over its property; that the sixth section of the charter gives them express power over the stock, 'to determine the time and terms of payment.' "

"As capital stock is not property until it shall be subscribed for, the power given to the directors in the charter to sell the property of the company does not apply to the disposition of capital stock; and it seems to be clear that the power to determine the time and terms of payment of subscriptions of stock, can have no reference *to its price*. The charter declares the shares of the capital stock shall each be fifty dollars; and it would be contrary to all known rules of construction to say that a provision that applies only to the payment of stock subscribed shall be so construed as to repeal the provision that fixes the value of each share.

"In declaring that the capital stock should be divided into shares of $50 each, the law was designed to give the same permanency to the limitation of the shares, as to the limitation of the capital stock. A subscription procured of 15,000 shares, amounting to the sum of $750,000, with the understanding that it should be discharged on the payment of about one-third less, was a fraud upon the law and upon the stockholders. The term fraud is here used in no other sense than as an act done without

> the authority of law, and against the provisions of the charter, and this epithet legally applies, however innocently the act may have been done by the directors."

The right of Stein and the promoters to take the surplus stock is placed by counsel for the respondents, in their brief at page 103, on an entirely different and inconsistent ground from that taken by the Court of Appeals. They admit that the plants were to be transferred to the corporation at the option prices, but their claim is that because Stein and the promoters, according to the option contracts, were to organize the corporation, secure the options at their own expense, that it *must* have been contemplated that they were to be reimbursed for their labor and their outlays. Therefore they say, that the promoters were entitled to take, on *a quantum meruit*, as it were, all the stock that was not absorbed in acquiring the mills for their services. This is a concession that there was only the one contract, and that contract was embodied in the options. We submit that if it be conceded that the promoters were entitled to compensation, the party paying the same—the Columbia Straw Paper Company, and through it these petitioners—should be allowed to pass upon the amount to be paid; and further, that the $2,113,000 of stock at par taken, was and is exorbitant and beyond all bounds of reason. Even deduct the $600,000 stock as bonus and it leaves $1,513,000, which also is at least a million over what they would be entitled to on a *quantum meruit*.

Respondents also claim that the number of mills to be taken over was left to the discretion of the promoters; that is to say, the respondents claim that under the option contract the promoters could have decided to have taken over

thirty-nine or any less number of mills, down to even one mill, and have taken balance of capital stock at par for their services. This can not be.

VIII.

That petitioners were not stockholders at the time of the conveyance of the property for stock. (No. IX, p. 107.)

Respondents insist that the incorporators and directors holding only eighteen shares of stock actually issued out of 40,000 shares, the total capital stock of the company, were the only THEN stockholders at the time of the directors making the alleged purchase of Stein under the options.

This proposition fails when it is considered that at the very time of making his proposition to sell the thirty-nine mills, Stein had the thirty-nine options before the board. All the *property* he had in the mill-plants was these options. He and the Board of Directors knew that every one of these options showed on its face that these petitioners and other mill owners were agreeing to sell to the corporation to be organized their mills under the terms of the options, *and not otherwise*. That under the terms of these options they were to become stockholders *direct* from the company. (Rec., p. 509.) The wording is:

> "The shares of stock to be issued unto the company in payment for the property and effects and for the covenants to be entered into by it, shall be duly allotted to the company by resolution of the corporation so to be organized at the time of the passage of the necessary resolutions authorizing the purchase of the property of the company, and the shares of stock shall be delivered as soon thereafter as the same can be printed and ready for delivery."

In fact, in law, and in the eyes of equity, these petitioners were stochholders *before* Stein had obtained any interest in the options, by assignment from Beard and Ramsdell, original parties of the second part to the options. The *very existence of this corporation* was dependent upon these petitioners agreeing to become stockholders, and it did not obtain its birth until they had agreed in the options to become such stockholders, and such options had been accepted by Stein, assignee, *on behalf of the corporation*, so as to bind them by their agreements to take its stock in part payment of purchase money.

Trust Defense Not Abandoned.

In No. III at page 38, the respondents claim that the court allowed the answer of the petitioners to be amended in order to present the "TRUST" defense; and that the evidence fails to show that the organization of defendant company, and the execution of the bonds and mortgage, were in pursuance of a scheme to organize a trust.

The record at page 234 shows that the court decided that the motion of the defendants, Harry W. Dickerman *et al.*, to amend their answer heretofore filed herein, be and the same is hereby denied. Prior to that time the record shows that Dickerman's motion for leave to amend was accompanied by the amendments which he proposed to incorporate in his answer, provided he was allowed to amend it.

The Circuit Court allowed the proposed amendments of Dickerman to the answer to be filed merely that a record might be made of the questions desired to be raised.

That part of Judge Showalter's oral opinion (the opinion is not in the record) which counsel for the respondents put in their brief, beginning on page 38, gives his reasons for refusing to allow the answer to be amended.

He says there was no trust, could not have been one, and no intention to form one. The failure to form the trust is the cause of Dickerman and the minority stockholders complaint. They complain because it was promised 70 mills, the entire number, were to be taken in, while, as a matter of fact, only 39 were acquired, and the 31 on the outside proceeded to cut prices.

In this his Honor was in error. The 31 were not at first taken over or acquired by the Columbia Straw Paper Company, but they were reduced to its control. In the sworn answers to the cross-bill it is asserted by Samuel Untermyer and all others that *before* the Columbia Straw Paper Company was formed, and while the scheme was suggested, it was represented to them—

> "That the then yearly consumption in the country of the produce manufactured by the mills was ninety thousand tons, and was increasing at the rate of about ten thousand tons per annum; that the mills from their location, their proximity to the straw-producing regions, and the consequent cheapness of manufacture, *would control most of the market, at least ninety-seven per cent. thereof*; that they probably could sell ninety thousand tons per annum; that the paper had been manufactured at $18.00 per ton by corporations, and that in this price was reckoned all the salaries of officers; that by saving in salaries, economy in railroad transportation and buying to advantage, the cost price could be reduced to about $16.00 per ton; that the average selling price for nine years had been $26.83 per ton; that for 1891 the selling price was $30.00 per ton; that even calling the cost of production $18.00, and the selling price $26.00, the profits

upon ninety thousand tons would be $720,000 per annum; that this would provide a sinking fund of $110,000 per annum, and pay $60,000 interest upon $1,000,000 of bonds, $80,000 upon $1,000,000 preferred stock, and leave $470,000 to apply on $3,000,000 of common stock, which would be upwards of fifteen and a half per cent.; that should the sales be but sixty thousand tons yearly, and the selling price but $26 per ton, still the amount of profit would be $480,000 per annum, which would put into the sinking fund $110,000 per annum, pay six per cent. on a million dollars bonds, eight per cent. on $1,000,000 preferred, and more than six per cent. on $3,000,000 common stock."

(Rec., pp. 132, 183.)

This was too much for the cupidity and avarice of our promoting friends. Instead of taking over all the mills, they decided the Columbia Straw Paper Company should take over but 39, they appropriate the stock provided for the other 31, and these 31 mills should be controlled and their product sold by a corporation called the Paper Commission Company to be organized by them, as it subsequently was. (Rec., pp. 360, 410, 418.)

The Paper Commission Company was organized under the laws of the State of New Jersey to sell the product of the Columbia Straw Paper Company and the outside mills. (Rep., pp. 120, 360.) One of the directors was Anthony Trentman, the owner of the Hartford City, Indiana, mill, *on which an option* had been given to Beard and Ramsdell. (Rec., pp. 417, 388.)

As a matter of fact as complete a "trust" was formed as if every mill had been originally acquired by the Columbia Straw Paper Company.

OTTO GRESHAM,

Solicitor for Petitioners.

JOHN S. COOPER,

Of Counsel.